

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, DC 20554

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In the Matter of: )  
 )  
 Implementation of the Local Competition )  
 Provisions of the Telecommunications Act )  
 of 1996 )  
 )  
 Joint Petition of BellSouth, SBC, and Verizon )  
 for Elimination of Mandatory Unbundling of )  
 High-Capacity Loops and Dedicated Transport )

CC Docket No. 96-98 /

**COMMENTS OF PENN TELECOM, INC.**

Penn Telecom, Inc. ("PTI") hereby files these comments on the April 5, 2001 joint petition for the elimination of mandatory unbundling of high capacity loops and dedicated transport filed by BellSouth Corporation and BellSouth Telecommunications, Inc., SBC Communications, Inc., and Verizon Telephone Companies (the "Petitioners").<sup>1</sup> For the reasons stated herein, PTI respectfully requests that the Federal Communications Commission ("Commission") deny the relief requested by the Petitioners for the Pittsburgh metropolitan area.

PTI is a CLEC providing service in the Pittsburgh metropolitan area. In its provision of service to small and medium business customers, PTI has elected to collocate facilities in a number of Verizon central offices and makes extensive use of unbundled loops, both basic cable pairs and high-capacity loops. PTI has reviewed the requests made by the Petitioners and the basis they suggest for granting that relief. That demonstration, however, is wholly inadequate to support the requested relief because:

<sup>1</sup> See Public Notice, DA 01-911, released April 10, 2001; Public Notice, DA 01-1041, released April 23, 2001 (Extension of dates for comments and reply comments).

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1. Petitioners have failed to demonstrate that there are sufficiently available alternatives to Verizon's high-capacity loops within the Pittsburgh metropolitan area. Although purported to support their contentions, the Petitioner's "Fact Report"<sup>2</sup> is incorrect and misleading with respect to the Pittsburgh metropolitan area. Petitioners fail to prove that a vibrant wholesale market exists within Pittsburgh for high-capacity loops necessary to justify their request.

2. Petitioners have also failed to demonstrate that the removal of high-capacity loops as an unbundled network element ("UNE") within the Pittsburgh metropolitan area would not result in serious harm to the development of competition. PTI relies heavily on Verizon high-capacity loops to provide services to its customer base throughout the Pittsburgh metropolitan area. Due to the geographic diversity of the small and medium businesses served by PTI, there are essentially no economically reasonable alternatives to the Verizon network. Thus, granting the relief being requested in the Pittsburgh metropolitan area would simply advantage Verizon and, in turn, burden PTI's provision of service to the detriment of the customers that PTI serves and may serve. Moreover, the relief being requested by the Petitioners simply exacerbates the financial strain that current competitors are facing as they venture into the local markets. Increasing the costs that PTI and other Competitive Local Exchange Carriers ("CLECs") incur by eliminating the only viable, current method of providing high-capacity service to its existing and future customer base is, at best, unwarranted. Petitioners have thus failed to demonstrate how their requested relief is consistent with the public interest.

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<sup>2</sup> See Petition, Attachment B, "Competition for Special Access Service, High-Capacity Loops, and Interoffice Transport" April 5, 2001 ("Fact Report").

**The Data that Underlies the Petitioners' Position with Respect to the Pittsburgh Metropolitan area is Wrong -- No Generally Available Alternative to Verizon's High-Capacity Network Exists**

In an effort to justify their position, Petitioners attempt to build a case that alternative vendors exist in all of the major markets, including the Pittsburgh metropolitan area. Apparently, in developing their request, Petitioners failed to rely upon the "real world" facts regarding the state of fiber network alternatives in the Pittsburgh metropolitan area.

For example, the "Fact Report" provided by Petitioners suggests that there are two wholesale fiber network providers in the Pittsburgh metropolitan area – American Fiber Systems and Yipes.<sup>3</sup> The Petitioners are wrong. Neither of these companies has actually installed fiber in the Pittsburgh metropolitan market. Yipes is a service provider offering native rate IP networks over fiber – not a provider of wholesale fiber networks.<sup>4</sup> While American Fiber Systems plans to be a wholesale fiber provider,<sup>5</sup> it has yet to construct any fiber assets in the Pittsburgh market.<sup>6</sup>

Petitioners reliance upon other wholesale providers of high-capacity bandwidth (not dark fiber)(i.e., Worldcom, AT&T, Adelphia and Intermedia) as a basis for justifying their relief is equally unpersuasive. In its experience in the Pittsburgh metropolitan area, PTI notes that only Worldcom and Intermedia have exhibited an interest in providing wholesale capacity to other CLECs. Even assuming, however, that WorldCom elected to make

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<sup>3</sup> See "Fact Report" Table 6. Wholesale Local Fiber Suppliers.

<sup>4</sup> Yipes has not constructed fiber networks in the Pittsburgh market for resale to other carriers or CLECs.

<sup>5</sup> See [www.americanfibersystems.com](http://www.americanfibersystems.com) on the web.

<sup>6</sup> Moreover, PTI notes that the only limited "wholesale provider" of fiber operating in the Pittsburgh market -- Duquesne Communications ("DC") -- is not even listed in the "Fact Report." Even if DC was included by the Petitioners, that would not sustain their position. DC provides only wholesale dark fiber in the Pittsburgh market, and its network, although in existence, is far from ubiquitous. See [www.dqecom.com](http://www.dqecom.com) on the web for specific fiber optic routes. The DC network (a portion of which PTI uses for interoffice connectivity) is less than 2 years old and reaches a limited number of commercial buildings in the Pittsburgh metropolitan area. The DC network, therefore, is hardly an option that supports the relief that Verizon is seeking for the entire Pittsburgh metropolitan area.

capacity available, the metroWorldcom network is still generally limited only to the central business district of Pittsburgh, not the majority of the entire metropolitan area. Although Intermedia, prior to their acquisition by WorldCom, had aggressively attempted to market high-capacity circuits as a wholesale vendor, Intermedia nevertheless had, in PTI's view, limited network assets in the Pittsburgh metropolitan area, relying primarily on Verizon for high-capacity loops to the end-user.

Petitioners also suggest that fixed wireless technology provides a high-capacity network alternative to CLECs.<sup>7</sup> However, Petitioners again fail to reconcile their contentions with the real-world. The two major fixed wireless providers, Winstar and Teligent, have both filed for Chapter 11 bankruptcy protection. Their respective futures, therefore, are unknown. Moreover, these companies employ the most robust fixed wireless technology which is based on recently auctioned spectrum. The networks using this spectrum are generally not currently available to PTI since they are owned by competitors who have no obligation to resell their services. Accordingly, PTI submits that there is no basis in fact to find that such networks will provide the alternatives necessary to CLECs that would justify the relief being requested by the Petitioners.<sup>8</sup>

In their attempt to justify the Petition, the Petitioners have characterized the growing market for broadband services with a sweeping statement that "businesses using high-capacity services are highly concentrated in limited geographic areas".<sup>9</sup> In addition, the Petitioners have used this geographic limitation to justify their definition of "ubiquitous"

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<sup>7</sup> See Fact Report at 23-24 and Petition at 15-16.

<sup>8</sup> Although PTI recognizes that non-licensed fixed-wireless technology exists, PTI notes that such technology has troubling service quality issues, particularly with respect to interference.

<sup>9</sup> Petition at 10, Fact Report at 2-3.

non-ILEC high-capacity services to mean those services available within such a narrowly defined area. PTI's experience indicates that businesses that use high-capacity services exist throughout the market, not just within the central business district or other limited areas. Consequently, PTI would argue that the Petitioners' definition of ubiquitous is flawed.

Finally, Petitioners allege that the majority of businesses using high-capacity services are located in a few commercial buildings that can be reached by what they assert are a more than adequate number of alternate high-capacity providers.<sup>10</sup> Both premises are factually incorrect. As demonstrated above, no alternative high-capacity network provider is present in the entire Pittsburgh metropolitan area to justify the relief that Petitioners seek. Petitioners' suggestion that the concentration of businesses are located in a few commercial buildings in the Pittsburgh metropolitan area is equally in error.

While large businesses in the Pittsburgh Metropolitan area may be generally concentrated in the central business district, PTI's customer base -- small and medium businesses -- are located throughout the metropolitan area in small industrial parks, commercial districts along the main traffic corridors, and suburban office parks. As PTI's experience demonstrates, Petitioners cannot suggest that users of high-capacity services are "highly concentrated in limited geographic areas."<sup>11</sup>

Accordingly, the Petitioners have failed to reconcile their "Fact Report" with the real-world. In the Pittsburgh metropolitan area, there are no ubiquitous alternatives to the Verizon network that would justify Petitioners' requested relief.

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<sup>10</sup> Petition at 10, Fact Report at 2-3.

<sup>11</sup> See Petition at 10-11.

**The Removal of High-Capacity Loops as an UNE would  
Seriously Harm PTI in the Pittsburgh Metropolitan area Market**

As demonstrated above, fiber networks of limited geographic scope do exist in limited areas of the Pittsburgh Metropolitan area, primarily in the downtown central business district. However, PTI has customers throughout the metropolitan area and, in fact, only a very small percentage of its high-capacity customers are located in buildings that are accessible from the very limited number of, and geographically limited, alternative fiber network providers. In comparison, however, Verizon's network extends to 100% of the PTI customer base. Accordingly, without access to Verizon's high-capacity UNEs, PTI would be unable to provide services to a large majority of its customer base at competitive rates.<sup>12</sup> Removing this UNE product, as suggested by Petitioners, and replacing them with access-tariffed high-capacity circuits would immediately increase PTI's operating expense to the point that these services would become unprofitable.<sup>13</sup> Thus, if PTI were forced to migrate to Verizon's tariffed offerings, PTI would either have to raise rates (thereby causing significant or total customer loss) or cease providing service to these customers (who, in turn, would most likely be forced to return to Verizon). Petitioners have not demonstrated why either of these results -- the reduction in consumer choice via alternative competitive service provisioning or decreasing CLECs' ability to provide competitively-priced services -- advances the public interest.

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<sup>12</sup> Currently, more than half of the high-capacity circuits that PTI provides to its customers are provisioned over Verizon high-capacity UNEs.

<sup>13</sup> A DS-1 circuit purchased in the Perrysville exchange of Verizon to a customer located 5 miles from the Central Office (CO) is priced at \$381.59 per month with a \$416 installation charge under Verizon FCC Tariff #1. This same circuit ordered as a UNE would be \$161.19 per month with a \$68.72 installation charge. This difference in rates is reflective of most of the high-capacity circuits that PTI purchases from Verizon. These circuits are typically some distance from the Central Office and cannot be accessed by standard copper loops and therefore cannot be served by PTI using DSL technology.

Petitioners argument that it is economical for CLECs to build their own networks to provide high-capacity services to business customers (projected at about \$30,000 for a one-mile loop<sup>14</sup>) misses the point. Overbuilding Verizon's network requires considerable investment and a sufficient customer base to justify that investment. PTI will construct network where necessary and where economically reasonable alternatives do not exist. Replicating the ILEC network overnight, however, is impractical due to the huge capital investments that are required. Access to UNEs, such as high-capacity loops, was intended to provide a viable way for competitors to enter the market and build a sustainable customer base to justify market-based facility deployment, without having to immediately undertake large network overbuilds. Competitors will need time to establish a solid foothold in the market and generate positive financial results before they can begin to make the investment necessary to migrate customers to their own facilities-based networks. Until that time, PTI respectfully submits that it is critical for the remaining competitors to continue to have access to all of the UNEs contemplated by the Communications Act of 1934, as amended (the "Act") and the Commission's decisions implementing those directives.

Accordingly, for the reasons provided, the removal of high-capacity loops as an UNE would seriously harm PTI in the Pittsburgh metropolitan area, and PTI reasonably assumes that similar results would occur in other markets. The effect of granting the Petitioners' request would be to turn the tide on competition and allow the Petitioners to regain market share. Only the very largest, deep-pocketed competitors will remain, and they will continue to focus their energies on the few select large business customers, potentially abandoning the small and medium businesses and residential customers to the ILECs, and leaving unfulfilled

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<sup>14</sup> See Petition at 14.

the promise of competitive choice that was envisioned by the Act. No reasonable basis has been provided by the Petitioners as to why these results serve the public interest. The Petitioners' request for relief should, therefore, be denied.



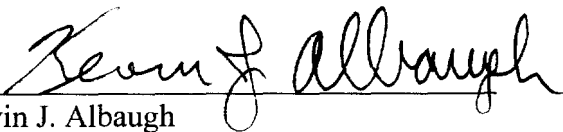
## Conclusion

As demonstrated herein, Petitioners have provided no factual basis to support their contention that alternative high-capacity providers exist within the Pittsburgh metropolitan area. Accordingly, there is no basis upon which to grant the relief for Pittsburgh. Moreover, PTI respectfully submits that the specific actions requested by the Petitioners would have a crippling effect on PTI's operations,. Further, PTI is concerned that granting the relief being requested will simply exacerbate the current financial challenges facing CLECs and potentially result in a reduction in competitive alternatives for consumers, a result clearly contrary to the public interest. For these reasons, PTI respectfully requests that the Commission deny the Petition for the Pittsburgh metropolitan area.

Respectfully submitted,

June 11, 2001

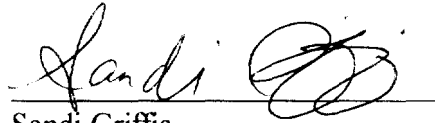
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CERTIFICATION OF SERVICE

I, Sandi Griffis, for Penn Telecom, Inc., 2710 Rochester Road, Cranberry Township, Pennsylvania 16066, hereby certify that a copy of the foregoing "Comments of Penn Telecom, Inc.", was served on the 11<sup>th</sup> day of June, 2001, by first class, U.S. Mail, postage prepaid to the following parties:

  
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